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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

Nos. 387-388

RECONSTRUCTION FINANCE CORPORATION,
Petitioner,

vs.

BANKERS TRUST COMPANY,
Respondent.

BRIEF FOR *AMICI CURIAE*

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December 11, 1942.

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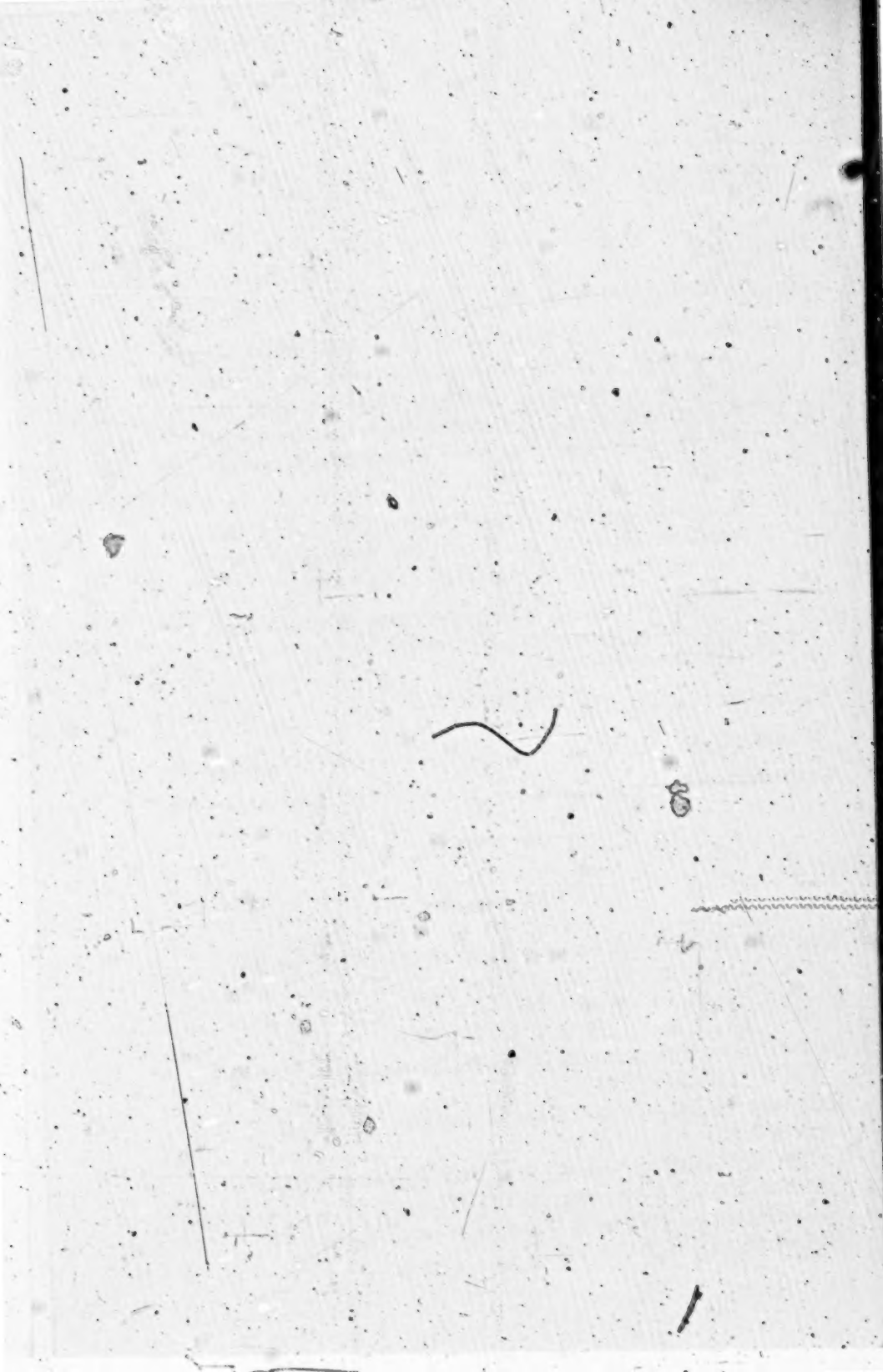

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MOTION FOR LEAVE TO FILF BRIEF AS *AMICI CURIAE*

To The Honorable The Chief Justice of the United States and the Associate Ju tice of the Supreme Court of the United States:

The undersigned, members of the bar of this Court, respectfully pray leave to file the attached brief as *amici curiae* on behalf of The Mutual Savings Bank Group on New Haven Railroad Bonds. There have been filed with the Clerk of this Court the written consents of all parties who have entered appearances here in this case.

Respectfully submitted,

FRED N. OLIVER,
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110 East 42nd Street,
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December 11, 1942.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

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RECONSTRUCTION FINANCE CORPORATION,

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BRIEF FOR *AMICI CURIAE*

Statement

This brief deals with the question of whether compensation and allowances for mortgage trustees and their counsel for services rendered in railroad reorganizations under Section 77 of the Bankruptcy Laws, as amended (11 U. S. C. A. Sec. 205), are subject to the maximum limits fixed by the Interstate Commerce Commission as provided under Section 77(c)(12). It is filed on behalf of the Mutual Savings Bank Group on New Haven Railroad Bonds, which consists of approximately 225 mutual savings banks holding approximately $39,000,000 principal amount

of bonds of the New York, New Haven and Hartford Railroad Company system, a railroad now in reorganization under Section 77. The question presented here was also raised in the New Haven reorganization by the same trust company that is the respondent in this case and has there been decided by Judge Hincks adversely to its contentions *In The Matter of the New York, New Haven and Hartford Railroad Company,* No. 16562, District Court for the District of Connecticut, unreported opinion dated June 3, 1942 (see Appendix B). An appeal from that decision has been taken by Bankers Trust Company to the Circuit Court of Appeals for the Second Circuit and is now pending. The same question is also presented in one or more other pending reorganizations under Section 77. This brief is submitted because of the importance of this question to holders of bonds secured by mortgages upon the properties of railroads in reorganization under Section 77.

ARGUMENT

I. Section 77 requires that allowances made to mortgage trustees for services rendered in connection with the proceedings and plan of reorganization shall be within such limits as may be fixed by the Interstate Commerce Commission.

The broad question presented in this case is whether services by mortgage trustees rendered in connection with a proceeding and plan of reorganization under Section 77 of the Bankruptcy Laws, as amended, must be within the limits fixed by the Interstate Commerce Commission or whether mortgage trustees may obtain payment for their services out of the property subject to their lien without regard to such limitations.

The subject of the allowance of expenses and compensation in proceedings under Section 77 is governed by Section 77(c)(12), which provides in part as follows:

> "Within such maximum limits as are fixed by the Commission, the judge * * * may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, * * *."

This provision is plain and unambiguous. It contemplates an allowance for the actual and reasonable expenses incurred, and reasonable compensation for services rendered by trustees under indentures. No other provision is contained in the Act for the making of allowances with respect to such expenses and services. Moreover, this paragraph specifically provides that such an allowance shall be within the limits fixed by the Commission. There are no exceptions. The language is specific and all inclusive.

Furthermore, Section 77(e) provides that the Judge shall approve the plan only if satisfied that

> "(2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge;"

The requirements of this clause reinforce those of subsection (c)(12). Not only are allowances limited by the

provisions of sub-section (c)(12) to such amounts as are encompassed within the maximum fixed by the Commission, but under the provisions of sub-section (e) the Judge may not approve the plan until he shall have been satisfied that amounts to be paid for expenses and fees incident to the reorganization are, among other things, within such maximum limits as are fixed by the Commission. Here again no exception is made. The language is plain and unambiguous and is all inclusive.

There seems to be little room for doubt as to either the purpose or the application of these provisions. However, if any doubt or ambiguity exists, reference to the Congressional history of Section 77 dispels such uncertainty. It is sufficient to observe that prior to the original enactment of Section 77 in 1933, the Commission had attempted, under its powers with respect to the issuance of securities under Section 20(a) of the Interestate Commerce Act and in recognition of the necessity for protecting insolvent railroads from exorbitant demands for fees and expenses, to exercise some measure of regulatory control over reorganization expenses, *Missouri-Kansas-Texas Reorganization*, 99 I. C. C. 330 (1925); *Chicago, Milwaukee, and St. Paul Reorganization*, 131 I. C. C. 673 (1928). However, this attempt on the part of the Commission was finally rendered ineffective as a result of the decision of this Court in *United States v. Chicago, Milwaukee and St. Paul Railroad*, 282 U. S. 311.

It is clear from the Congressional debates that the situation resulting from the decision of this Court in the St. Paul reorganization, was foremost in the minds of Congress. The purpose of Congress to this effect was clearly stated by Representative La Guardia (76 Cong. Rec., p. 5358):

> "We have taken the views in the minority opinion in the *Chicago, Milwaukee & St. Paul Railroad* case, *even to the extent that all incidental and indirect costs, expenses, and fees are subject to the control of the Interstate Commerce Commission,* and have written that into the law." (Emphasis supplied.)

He pointed out (76 Cong. Rec., p. 2927) that the proposed Section 77 provided:

> "*complete supervision and control by the Interstate Commerce Commission of all expenses* in connection with the reorganization of a railroad. • • • In this way we have carried out, I believe in every detail, the enlightened, sound, and constructive suggestions contained in the dissenting opinion of Mr. Justice STONE in the *Chicago, Milwaukee* case • • •." (Emphasis supplied.)

In 1935 the provisions of Section 77 relating to the allowance of expenses and fees were amended to their present form. This amendment was discussed both in the House (79 Cong. R. 13307) and the Senate (79 Cong. Rec. 13765).

Nowhere have we found any suggestion, either in the House Committee hearings or in the debates in Congress, that allowances to mortgage trustees were to be an exception to the all-inclusive provisions of the Act delegating to the Commission authority to fix the maximum limits for allowances. On the contrary this history shows that the purpose of Congress was to invoke the informed judgment of a specialized tribunal in dealing with the problem and to entrust to it the initial task of fixing maximum limits for allowances, which, if otherwise uncontrolled, might constitute a serious drain upon the assets of a newly reorganized carrier.

The decisions dealing with this general problem are, with the exception of those below in the instant case, in

accord with the interpretation of the statute set forth above. In *In Re Chicago and North Western Railway Company*, 35 F. Supp. 230 (D. C., N. D. Ill., 1940), the court said:

> "The position of the trustee seems to be that a mortgage trustee and its counsel can, under a mortgage providing for reasonable compensation to the trustee and its counsel, render service of the character compensable under the statute aforesaid of a reasonable value in excess of 'the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan' and in excess of 'the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith' and that the court must cause such excess to be paid out of the mortgaged property. The court is satisfied that it has no power to make allowances for compensation for services compensable under the statute aforesaid in excess of the maximum allowances fixed by the Interstate Commerce Commission, whether such excess be payable out of the mortgaged property only or from other sources."

In *Matter of the New York, New Haven and Hartford Railroad Company, supra*, Judge HINCKS overruled a similar contention of a mortgage trustee and concluded as follows:

> "Just as Section 77 provides a technique of reorganization which does not require the enforcement of mortgage liens, so it contemplates by subdivision (c)(12) a technique for the liquidation and discharge of contractual claims for services which obviates the necessity of the foreclosure of the covering liens. And the fact that the services and expenses of these petitioners happen to be the subject-matter of contract liens no more excludes their allowance from the effect of (c)(12) than the existence of outstanding mortgages operates to immunize the bondholders

secured thereby from the other provisions of the Act which contemplate that their claims may be discharged by the substitution of securities of equivalent value under a plan which satisfies the requirements of the Act. The petitioners' contract provided that they should receive reasonable compensation and reimbursement. The same standard of liquidation is prescribed by Section 77. Only the method and the forum for accomplishing the liquidation is changed.

"The language of (c)(12) specifies a single method which shall apply to all parties alike. That Congress indeed intended that subdivision (c)(12) should apply to Indenture Trustees who might happen to have a lien, as well as to other parties in interest and committees who were without a lien, abundantly appears from the legislative history of the Act. There is thus no occasion for the modification of the inclusive language of (c)(12) by the process of construction."

II. A judicial construction of Section 77(c)(12) that would provide an exception for mortgage trustees would defeat the purpose of Congress.

The purpose of Congress was to provide "complete supervision and control by the Interstate Commerce Commission of all expenses in connection with the reorganization of a railroad" (76 Cong. Rec., p. 2927). A construction of Section 77(c)(12), which would make an exception with respect to mortgage trustees would not only seem to be contrary to the express language of that provision, but would, to that extent, defeat the purpose of Congress in bringing all expenses under the control of the Commission. That this is a matter of substantial practical consequence is apparent from a reference to any of the major proceed-

ings under Section 77 for a comparison of the aggregate amount of allowances requested by mortgage trustees with the aggregate amount requested by other parties.[1]

Moreover, the absence of any such control would remove what might otherwise be an effective deterrant to over-zealous or excessive activity in certain instances. The Circuit Court of Appeals for the Seventh Circuit in *In Re Chicago and North Western Railway Company*, 126 F. (2d) 351 (1942), said:

> "Nor can we ignore the fact that the attack in this court has been waged largely by trustees named in Debtor's numerous mortgages. They assert a right to appeal and attack the plan although the great majority of the bondholders, for whom they assume to speak, are satisfied and opposed to their appeals. In fact, the trustees assert they are within their rights (and duties) to take these appeals even though all the bondholders of their particular mortgage are all satisfied with the reorganization and all oppose the taking of an appeal by the trustees. We think otherwise. This is hardly the place to discuss or decide the authority of the trustees to prosecute appeals, irrespective of their bondholders' wishes, however. The most liberal construction of powers of trustees to litigate and to take a position antagonistic to the views and wishes of the great majority (or all) of the bondholders and to load the disturbed and distracted creditors with large expenses, emphasizes our reasons for bringing the litigation to an end at the earliest possible date.
>
> . . . . . .
>
> "One creditor, with a claim of less than one-fourth of one percent of debtor's total indebtedness is attempting to block and defeat the plan. And said

[1] These figures, tabulated for eight major reorganizations, are set forth in Appendix "C" to the petition of Reconstruction Finance Corporation for certiorari.

creditor is speaking through a trustee who is misrepresenting a majority of the holders of bonds for whom it speaks. And more, it asks compensation for itself and its counsel for performing this work."

It seems plain that it was the intent of Congress to guard against just such situations as this. Sub-section (c)(12) contains language appropriate to that end. Any construction of sub-section (c)(12) that would seriously impair its scope would unfortunately impede the efforts of Congress to improve the machinery of reorganization.

III. The arguments by which mortgage trustees seek to avoid application of Section 77(c)(12) are without substance.

In the courts below, and in other pending cases, mortgage trustees have sought to avoid the application of subsection (c)(12) by a variety of arguments. We will consider some of these briefly.

1. It is sometimes contended, and was so contended in the courts below, that services rendered by mortgage trustees are not "in connection with the proceedings and plan" and, therefore, do not fall within the limits of subsection (c)(12). The Circuit Court of Appeals evidently believed that the services here involved were rendered in connection with the proceedings and plan since it stated:

> "Nor is the fact that the services of appellee may have been rendered and its expenses incurred in connection with the reorganization plan and proceedings controlling on the question here. In a literal sense they were because they were made necessary by the reorganization proceedings. The officers of appellee and its counsel gave attention to the steps taken in the proceedings and attended hearings

before the court and the Commission. They took part in conferences in regard to the status of the proposed plan of reorganization and in meetings held to work out new plans" (Rec. 106).

Moreover it is evident from a review of the services described by Bankers Trust Company in its petition for allowances that such services rendered by it and its counsel were occasioned by, and directly in connection with, the proceedings and plan of reorganization and but for such proceedings would have never been required (Rec. 19-26, 35-59, 62-77). Without reviewing such services in detail, it seems indisputable that services in connection with court hearings and orders, Commission hearings on a plan, attendance at conferences in connection with such matters and research with respect to questions arising therefrom are services in connection with the proceedings and plan.

2. The basis of the decision of the Circuit Court of Appeals below seemingly is that Bankers Trust Company requested compensation, not under Section 77(c)(12), but under the terms of the mortgage, for services rendered on behalf of the bondholders, irrespective of any benefit to the estate (Rec. 106). Such an intepretation would lead to the result that application of the procedure prescribed by Congress would be dependent upon the election of a claimant and would substitute for a matter of substance a mere matter of form.

Moreover, the contention that services performed by a mortgage trustee are not for the benefit of the estate but solely for the benefit of bondholders and, therefore, of a character different from those contemplated by sub-section (c)(12), is merely an attempt to state the problem in such a way as to make the statute inapplicable. Nothing in sub-section (c)(12) prohibits the making of an allowance

for services which are primarily for the protection of a single class of security holders. Nor have the Commission and courts so construed this provision, inasmuch as allowances for mortgage trustees have been frequently made in accordance with those provisions. In fact there are relatively few instances in which a party participating in a reorganization purports to act for other than a restricted group of interests.

3. It is contended by mortgage trustees that, if subsection (c)(12) were held to be applicable to the services and expenses of a mortgage trustee, they would be deprived of the right to a judicial review in violation of the Fifth Amendment of the Constitution of the United States. This argument was effectively answered in Judge HINCKS' decision on the same question in *In the Matter of The New York, New Haven and Hartford Railroad Company, supra,* where he stated:

> "The petitioners further complain that under the Act, as I have construed it, they are deprived of all right to judicial review of a decision by the Commission which seems to liquidate, at least in one dimension, their contractual right to compensation. This complaint is unfounded.
>
> "For under subdivision (e)(2) the Judge may approve a plan only if 'satisfied' that all allowances 'for expenses and fees incident to the reorganization * * * are within such maximum limits as are fixed by the Commission' *and are 'reasonable'*. Thus the petitioners' liens can be extinguished through a discharge of their claims in these proceedings only if the maxima set by the Commission are such that the allowances made thereunder by the Judge are found by the Judge to be reasonable.
>
> "And if the Judge shall not be satisfied that such maxima permit of allowances which are reasonable,

under the Act the Judge may return the petition for reconsideration by the Commission. Such is the view of the parties opposing petitions 492 and 611, including counsel for the Commission. The power of a Judge so to return a petition must be recognized unless Congress intended that a Judge should certify an allowance as 'reasonable' although convinced that it was inadequate. Such a law would stultify both author and agent."

4. It is also contended by mortgage trustees that, if sub-section (c)(12) were construed to be applicable to their claims for an allowance, it would constitute an impairment of their substantive right to a lien under the terms of the indentures. This contention was also answered by Judge HINCKS in the same decision, in which he said:

"Nor is the Act, thus construed, unconstitutional.

"The petitioners' liens are not impaired. Like the liens of all the mortgagees and pledgees in these proceedings, the remedy only is suspended. If these proceedings shall be dismissed, the lien forthwith becomes enforceable with all its pristine vigor. Such a suspension of the remedy is not inconsistent with the Constitution. *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648. *Cf. Wright* v. *Union Central Life Ins. Co.*, 311 U. S. 273, at 279."

Moreover this argument confuses two separate and distinct functions (1) that of the Commission in determining the maximum limits of reasonable compensation and (2) that of the court in determining the existence and extent of a lien for compensation allowed. Congress may properly separate these functions. In doing this, it has empowered the Commission only to fix a maximum for compensation, not to disturb any liens. If a mortgage trustee has a lien, that lien will secure the payment of the allowance made by the court within such maximum. Further-

more, the measure of compensation under sub-section (c)(12) is "reasonable compensation" and is no different from that generally found in indentures.

An analogy is found in Section 77(e) where the determination of the value of any property for any purpose is entrusted to the Commission, although the court determines the extent of mortgage liens. In the present instance the Commission is given the power to fix maximum limits for the value of services, in the other to determine the value of property. Determination of the extent of a lien by the court involves problems relating to what property the lien attaches, the liens to which it is subordinate and related matters, and is a question wholly apart from the function performed by the Commission.

Conclusion

Section 77(c)(12) was designed by Congress as a safeguard against excessive allowances. It provides a uniform standard and a uniform procedure. Any exception to the application of that provision will impair, correspondingly, the efficacy of the protection afforded.

We ask that the decision below be reversed and that this Court plainly state the scope and effect of Section 77(c)(12) for the guidance of other courts in which the same question is pending.

Respectfully submitted,

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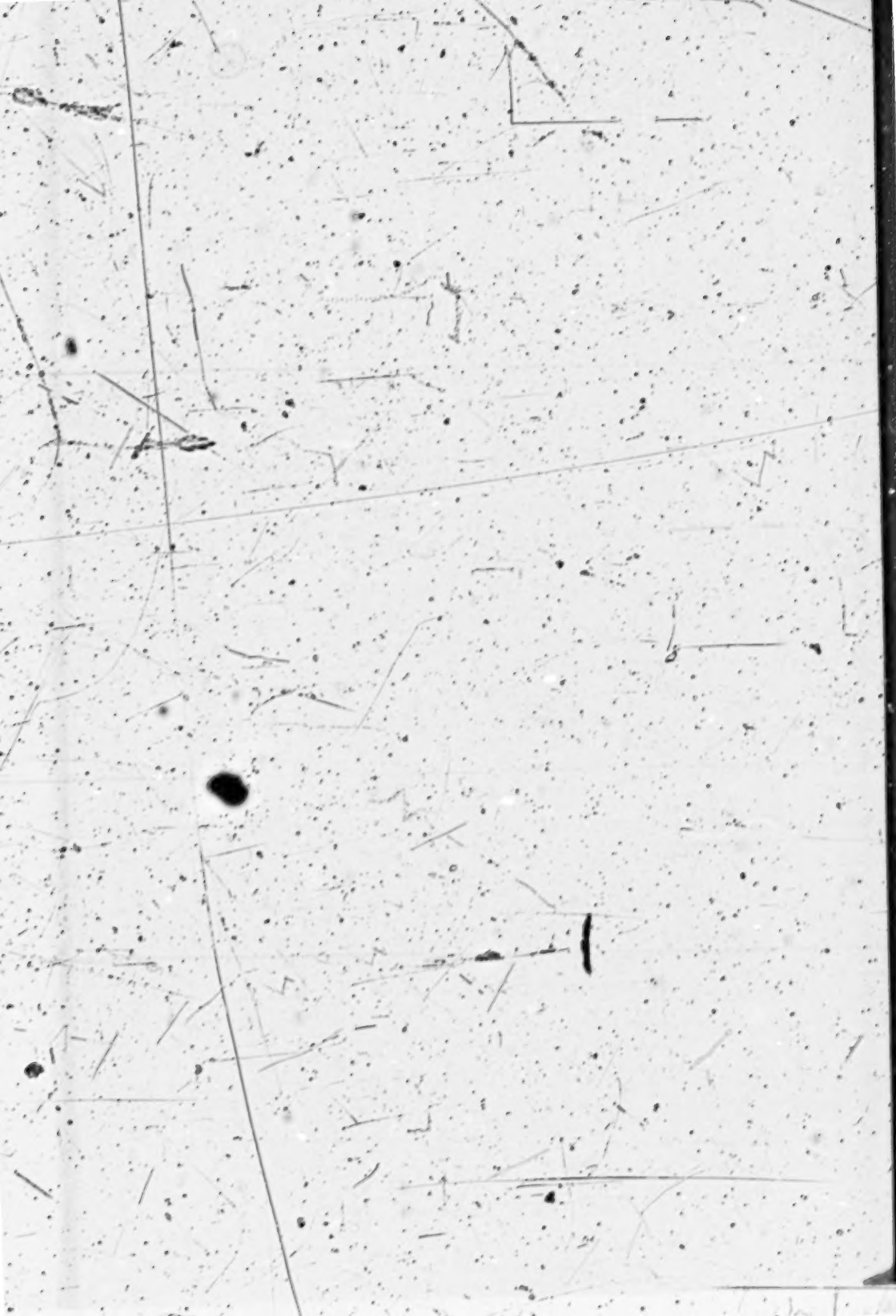
Appendix A

Section 77(c)(12) provides as follows:

"(12) Within such maximum limits as are fixed by the Commission, the judge may make an allowance, to be paid out of the debtor's estate, for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries and such assistants as the Commission with the approval of the judge may especially employ. Appeals from orders of the court fixing such allowances may be taken to the circuit court of appeals independently of other appeals in the proceedings and shall be heard summarily. The Commission shall, at such time or times as it may deem appropriate, after hearing, fix the maximum allowances which may be allowed by the court pursuant to the provisions of paragraph (12) of this subsection (c) and, after hearing if the Commission shall deem it necessary, the maximum compensation which may be allowed by the court pursuant to the provisions of paragraph (2) of this subsection (c)."



Appendix B

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, *Debtor.*	No. 16562

MEMORANDUM OF DECISION ON MOTIONS TO DISMISS PETITIONS FOR ORDERS 492 AND 611

These petitions are brought each by an indenture trustee, No. 492 by Bankers Trust Company, as trustee under the First and Refunding Mortgage and No. 611 by Irving Trust Company as trustee under a Collateral Trust Indenture, asking the Court without reference to or restriction by any maximum allowances set by the Interstate Commerce Commission in these proceedings to adjudicate the amounts on account of the services and expenses of the respective petitioners and their counsel in these proceedings; to decree that the allowances thus established constitute under the provisions of the respective indentures

prior liens in favor of the petitioners upon the respective mortgaged properties, or upon securities to be issued to the bondholders secured thereby; and to enforce said liens.

The matter is before the Court upon motions to dismiss these petitions filed and pressed by the Interstate Commerce Commission through its counsel, by the New Haven Trustees, and by Reconstruction Finance Corp., a collateral noteholder in these proceedings. The petitions have also been opposed by brief in behalf of the Mutual Savings Bank Group.

I.

I hold that the services rendered and expenses incurred by the petitioners and their attorneys are covered by the liens of the respective mortgage indentures, in so far as said services were reasonably necessary and adapted (a) to protect and advance in these proceedings the interests of the underlying bondholders, (b) to advance the achievement of reorganization, and (c) to protect the mortgage trustee from personal liabilities for which under the mortgage it has a right of indemnity against the debtor's estate.

I cannot accept the view that the petitioners were acting as mere volunteers in the premises. They were acting at least in substantial part under the contract of the trust indenture whereby they were expressly entitled to "reasonable compensation" and to "reimbursement of reasonable expenses, including counsel fees" for all services rendered "in the execution of the trusts hereby created." The indenture was drawn long prior to the enactment of Section 77. It provided that in case of default the petitioner, as also bondholders, might enter upon and operate the mortgaged property for the benefit of all bondholders; also that the petitioner might foreclose the mortgage and obtain a receiver.

I think no one will dispute that the petitioners would have been remiss in their proper discharge of their trusts if in an equity receivership they had left their cestuis without representation or after default had failed to take appropriate action for their protection. Certainly this equitable obligation was not precisely to be measured by their possible liability in an action at law for non-feasance. I find nothing in Section 77 which exonerates mortgage trustees from their equitable obligation to take action appropriate to the same objective. Such a view, indeed, seems repugnant to Congressional policy as declared in the Trust Indenture Act of 1939. See 15 U. S. C. A. 77bbb and 77000(c).

To be sure, the Bankruptcy Act substitutes statutory remedies for the remedies incident to an equity receivership, to the extent that the new remedies vary from the old the course of activity by a mortgage trustee and much of the incidental—but inescapable—detail requires adaptation to that change. But this change did not extinguish any rights or obligations growing out of the mortgage indenture nor transform the status of the petitioners from that of responsible trustees to that of volunteers. And the activities reasonably required for their own protection and for the protection of their bondholders under the exigencies of reorganization under Section 77, as indeed also services contributing to the achievement of reorganization, fell within the lien of the mortgage contracts. *Cf. Straus* v. *Baker Co.*, 87 Fed. (2nd) 401, at page 408.

I notice that the Commission has made a distinction between "regular and routine services performed in administering the trust, ordinarily covered by an annual maintenance fees" and other "special" services performed in the reorganization proceedings. This distinction seems to me entirely valid. Such routine services cannot constitute

allowances in the reorganization proceedings and are not subject to the jurisdiction of the Commission, because they are not "incurred in connection with the proceedings and plan", as specified under subdivision (c)(12). Nevertheless, both the routine services and the services in the reorganization proceedings may be covered by the lien of the mortgage indenture.

II.

I hold that all compensable services and expenses of the petitioners which were incurred in connection with the proceedings and plan fall within the provisions of Section 77(c)(12).

Just as Section 77 provides a technique of reorganization which does not require the enforcement of mortgage liens, so it contemplates by subdivision (c)(12) a technique for the liquidation and discharge of contractual claims for services which obviates the necessity of the foreclosure of the covering liens. And the fact that the services and expenses of these petitioners happen to be the subject-matter of contract liens no more excludes their allowance from the effect of (c)(12) than the existence of outstanding mortgages operates to immunize the bondholders secured thereby from the other provisions of the Act which contemplate that their claims may be discharged by the substitution of securities of equivalent value under a plan which satisfies the requirements of the Act. The petitioners' contract provided that they should receive reasonable compensation and reimbursement. The same standard of liquidation is prescribed by Section 77. Only the method and the forum for accomplishing the liquidation is changed.

The language of (c)(12) specifies a single method which shall apply to all parties alike. That Congress indeed

intended that subdivision (c)(12) should apply to Indenture Trustees who might happen to have a lien, as well as to other parties in interest and committees who were without a lien, abundantly appears from the legislative history of the Act. There is thus no occasion for the modification of the inclusive language of (c)(12) by the process of construction.

And certainly the construction advanced by the petitioners is inadmissible. They point to the language of (c)(12) under which the court may order the allowances thereby authorized to be paid "out of the debtor's estate". I agree that this language is broad enough to authorize in a proper case payment from the free (unmortgaged) assets of the estate. In this respect, perhaps the Act goes further than the equitable rule whereby allowances for services in behalf of mortgaged property might be charged against the mortgaged assets. But I cannot agree that the scope of (c)(12) is limited to such allowances as may only be charged against the general (unmortgaged) estate. The language used, viz., "the debtor's estate", is broad enough to include the mortgaged assets as well as the free assets. And if the *enforcement* provisions of (c)(12) are entitled to this broad construction, as I hold, there is no room left for the argument that the *liquidation* provisions of (c)(12) with the accompanying grant of jurisdiction to the Commission must by a narrower process of construction be confined to services not covered by lien.

III.

Nor is the Act, thus construed, unconstitutional.

The petitioners' liens are not impaired. Like the liens of all the mortgagees and pledgees in these proceedings, the remedy only is suspended. If these proceedings shall

be dismissed, the lien forthwith becomes enforceable with all its pristine vigor. Such a suspension of the remedy is not inconsistent with the Constitution. *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648. *Cf. Wright* v. *Union Central Life Ins. Co.*, 311 U. S. 273, at 279.

The petitioners further complain that under the Act, as I have construed it, they are deprived of all right to judicial review of a decision by the Commission which seems to liquidate, at least in one dimension, their contractual right to compensation. This complaint is unfounded.

For under subdivision (e)(2) the Judge may approve a plan only if "satisfied" that all allowances "for expenses and fees incident to the reorganization * * * are within such maximum limits as are fixed by the Commission" *and are "reasonable"*. Thus the petitioners' liens can be extinguished through a discharge of their claims in these proceedings only if the maxima set by the Commission are such that the allowances made thereunder by the Judge are found by the Judge to be reasonable.

And if the Judge shall not be satisfied that such maxima permit of allowances which are reasonable, under the Act the Judge may return the petition for reconsideration by the Commission. Such is the view of the parties opposing petitions 492 and 611, including counsel for the Commission. The power of a Judge so to return a petition must be recognized unless Congress intended that a Judge should certify an allowance as "reasonable" although convinced that it was inadequate. Such a law would stultify both author and agent. Moreover, the restriction of allowances to inadequate dimensions would tend to nullify the policy of the Act to encourage responsible creditor and class participation in reorganizations. This policy, in a sense, is paramount to the policy of economy in administration;

were it otherwise the Act would have prohibited all allowance of compensation to the parties from the estate. But plainly Congress did not want costless reorganizations rather than just reorganizations. It follows that the true policy relating to economy is one adapted to preclude excessive expense,—not to enforce inadequate compensation. Thus understood, the policy collides not at all with that of encouraging useful and responsible creditor representation by the allowance of adequate compensation through which that objective can be achieved.

This view is also completely in harmony with the underlying scheme of the Act. For the Act charges the Commission with the responsibility of determining values and of formulating plans. Yet the plans thus reported can be approved by the Judge only if he is satisfied that they are fair; if not thus satisfied, unless he dismisses the proceedings, he can only return the plan to the Commission for further consideration. And so as to a maximum allowance set by the Commission. The Judge can approve the plan only if satisfied that all allowances are within the maxima set by the Commission *and are reasonable;* failing that, he can only dismiss the proceedings or "refer the proceedings back to the Commission for further action" (subdivision (e), second paragraph). Surely under this provision if the Judge's disapproval were limited to the maxima set by the Commission upon specified petitions for allowances, he need not refer back the substantial provisions of a reported plan: a re-reference of those specified petitions would suffice, accompanied by his "opinion stating his conclusions and the reasons therefor."

To be sure, this seems a cumbersome procedure for the liquidation of an allowance. Indeed, theoretically at least, the procedure may produce a deadlock between the Commission and the Judge which may ultimately block a re-

organization. Yet from a practical standpoint, as Congress apparently perceived, in almost every case in which reorganization is indeed feasible a considered exchange of views between the Commission and the Judge will result in a final agreement purged of inadvertence and extravagance which shall permit of a fair appraisal of services under the particular eye of the Commission and services relating principally to activities before the Judge. Anyhow, Congress deemed it wise to condition the privilege of reorganization upon such an agreement. And if ever a case shall arise resulting in a final deadlock instead of agreement, perhaps the disagreement can be solved by an appeal from the Judge's order disapproving the reasonableness of a reconsidered maximum set by the Commission. However that may be, the petitioners here cannot justly complain that their rights have been insulated from judicial review when judicial sanction is required for the liquidation and discharge of their claims in the bankruptcy proceedings and in the event that the bankruptcy proceedings are dismissed their claims and covering liens are left unimpaired for adjudication elsewhere.

Thus any question as to the validity of an exclusive grant of jurisdiction to the Commission to fix, or even limit, allowances is not involved under the Act. And there is no basis for the constitutional objection which the petitioners invoke.

On these conclusions, the motions to dismiss petitions 492 and 611 must be granted. For these petitions are neither appropriate nor necessary to raise in issue in these proceedings the reasonableness of the maxima allowed by the Commission. That issue was available to the petitioners at the hearing in this court upon their applications for allowances after the Commission had set maxima under Section 77(c)(12). On that record, without any further

expansion, it lay within the power of this Court in these proceedings either to order allowances within the limits of the maxima or to return the applications to the Commission for further action on the ground that the maxima did not permit of adequate compensation.

Nor can the bankruptcy court in these proceedings enforce the petitioners' liens. For the lien are suspended during these proceedings: they may be enforced only if these proceedings are dismissed.

An appropriate order may be submitted.

Dated at New Haven this 3rd day of June, 1942.

C. C. Hincks,
United States District Judge.